IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5605 OF 2002

1. Shri Balshiram Khandu Pawale)
2. Shri Baban Khandu Pawale)
All residents of Village Kalus,)
Taluka - Khed, District - Pune.) ..Petitioners.

V/s

1. Special Land Acquisition)
Officer No.22, Collector Office)
Compound, Pune - 411 001.)

2. District Resettlement Officer)
District Pune.)

3. Divisional Commissioner,)
Revenue Division Pune, Pune.)

4. State of Maharashtra)...Respondents.

Mr. U.B. Nighat for the petitioners.

None for the respondents.

CORAM: R.M.S. KHANDEPARKAR &
V. M. KANADE, JJ.

DATE: 17th August, 2005.

ORAL JUDGMENT: (Per V.M. Kanade, J.)

1. By this Petition, petitioners are challenging the acquisition proceedings initiated by the Special Land Acquisition Officer by issuing Notification under section 4 dated 24/09/1997 and declaration dated 02/06/1998 issued under sections 6 and 17 of the Land Acquisition Act, 1894 and the award dated 31/03/2000 which was passed pursuant to the said declaration dated 02/06/1998. Petitioners are also challenging

the order passed by the respondent No.3 - Divisional Commissioner, Revenue Division, Pune dated 14/08/2002 on the representation made by the petitioners in respect of the land which was acquired by the Special Land Acquisition Officer. Petitioners are challenging the aforesaid Notification and the decision passed by the respondent No.3, under Articles 226 and 227 of the Constitution of India.

2. Brief facts are as under:-

3. Respondent No.1 - Special Land Acquisition Officer No.22 issued Notification under section 11 of the Maharashtra Project Affected Persons Rehabilitation Act, 1986 and, thereafter, issued Notification under section 4 of the Land Acquisition Act, 1894 in respect of the land belonging to the petitioners, admeasuring 80 R out of the land bearing Gat No.1642 (Part) situated at village Kalus, Taluka Khed, District Pune. Respondent No.1 also applied urgency clause under section 17 of the Land Acquisition Act and, thereafter, an award was passed after inquiry under section 9 of the said Act was held.

4. After the award was passed, petitioners made representation before the Divisional Commissioner,

Revenue Division, Pune in which it was contended that the various circulars which were issued by the Government from time to time were not taken into consideration before passing the award and it was, therefore, contended that the acquisition proceedings were liable to be quashed. It was contended that the total holding of the petitioners was less than 8 acres if the share of other co-parceners was taken into consideration. It was contended that the father of the petitioners expired on 08/01/1992 and after his death the name of the petitioners along with two other heirs came to be recorded in the revenue record of the agricultural land. It was further contended that the petitioners were living separately since 1980 by way of family arrangement. It was, therefore, submitted that if the shares of the other co-parceners were taken into consideration, the total holding of each of the petitioners would be less than 8 acres and, consequently, the benefit of the circulars which were issued by the Government from time to time ought to have been given in favour of the petitioners. Respondent No.3, however, by a reasoned order rejected the representation which was made by the petitioners by his order dated 14/08/2002.

5. Being aggrieved by the aforesaid order and by the award which was passed by the Special Land Acquisition Officer, petitioners have approached this Court by invoking writ jurisdiction of this Court under Articles 226 and 227 of the Constitution of India.

6. The learned Counsel appearing on behalf of the petitioners has submitted that neither the Special Land Acquisition Officer nor the Divisional Commissioner - Respondent No.3 have taken into consideration the directions which were issued by the Government by its circular dated 28/06/1998. He submitted that part of the land of the petitioners was outside the benefitted zone and as per circular dated 28/06/1998, the land which fell outside the benefitted zone was liable to be excluded. He submitted that this fact was not taken into consideration before passing the award and while considering the representation. He submitted that, consequently, the award as also the impugned order passed by the Divisional Commissioner - Respondent No.3 were liable to be set aside. He further submitted that by circular dated 28/06/1998, directions were given to the Special Land Acquisition Officer regarding the manner in which the slab of 8 acres was to be taken into consideration. Further directions were given to

exclude the land of the other co-parceners and, thereafter, calculate the slab of 8 acres. The learned Counsel submitted, on the basis of these circulars, that this directions which were given by the Government have not been followed by the Special Land Acquisition Officer and respondent No.3. The learned Counsel also invited our attention to the order dated 1/12/1998 passed by the Supreme Court in the case of Dubas Bahu Balwan vs. Director of Resettlement and Ors. in Civil Appeal No. 11809 of 1995. He submitted that the Supreme Court, by the said order, remanded all matters to the Commissioner, Pune Division, Pune to examine individual matters afresh on the basis of the Government Circulars. The learned Counsel also invited our attention to the Division Bench Judgment of this Court in the case of Shri Raghunath Dattu & Anr. vs. The State of Maharashtra and Ors. in Writ Petition No. 2662 of 1999, dated 07/06/1999 wherein similar directions were given by the Division Bench of this Court.

7. It is not possible to accept the submissions made by the learned Counsel appearing on behalf of the petitioners. Respondent No.1 has filed an affidavit-in-reply. By the said affidavit, it is specifically averred in para 7 that the Circular dated

28/06/1998 had been cancelled by the Government. No rejoinder has been filed to this affidavit-in-reply. Further, it is stated that benefit of this circular even otherwise would not be given to the land holders after a declaration was made under section 6 of the said Act. It is further stated in the affidavit that respondent No.3 had considered all the submissions which were made by the petitioners and these submissions have been dealt with in the order dated 14/08/2002 and, therefore, there was no reason to interfere with the said order which is passed by respondent No.3. which had considered the submissions made by the petitioners on the facts of the said case and had recorded finding that no evidence has been produced by the petitioners in support of the said submission.

8. The Division Bench of this Court in the case of Shivgonda Balgonda Patil and others vs. The Director of Resettlement and others reported in **AIR 1992 Bombay 72** had an occasion to consider the provisions of sections 13(3) and 10 of the Maharashtra Resettlement of Project Displaced Persons Act, 1976 which is replaced by Maharashtra Project Affected Persons Rehabilitation Act, 1986. An argument was advanced before the Division Bench in the said case that the

land which was not part of the benefitted zone could not be acquired in view of the bar which is provided under section 10 of the said Act. However, the Division Bench, after considering the said provisions, has observed in para 5 as under:-

> "5.....
>
> Thus, the list of lands available for resettlement of displaced persons is very wide. It is not confined only to the land acquired from the benefitted zone of the Project concerned. Clearly, even land outside the benefitted zone can also be used for this purpose.(Emphasis supplied). In fact, under Section 10 an obligation is cast on the State Government to resettle as may displaced persons as possible on lands in the benefitted zone or in other villages or areas which may be specified by the State Government by an order in writing. There is nothing in these provisions to indicate that the lands in the benefitted zone which are referred to, are confined only to the benefitted zone of the concerned project.(Emphasis supplied). In fact that definition of "displaced person" also makes it clear that it covers all persons

> who have been displaced from land on account of acquisition of their land in the effected zone. Sec. 2(7) defines "displaced person" to mean "any occupant who on account of the acquisition of his land in the affected zone.....for the purposes of a project has been displaced from such land.....". This definition also does not in any way suggest that a displaced person's right of resettlement is confined to the lands benefitted by any particular project."

The question, therefore, has been considered by the Division Bench of this Court and it has been held that even the land which is outside the benefitted zone can be acquired by the Government.

9. So far as judgment of the Supreme Court referred to above on which reliance is placed by the learned Counsel for the petitioners is concerned, in our view, this issue raised in this petition was not agitated before the Supreme Court and the Supreme Court had merely directed the Commissioner to consider the matter afresh. While issuing said direction, the Supreme Court has observed as under:-

. "During the pendency of appeals in this Court in the light of the above contentions, we had called upon counsel for the Respondents to examine the matter and submit a statement showing the correct position in respect of the pending cases. The statement, though prepared, would require detailed and individual examination of each case separately on the basis of the village record and related documents. We therefore, feel that it would be appropriate to remand all these matters to the Commissioner, Pune Division, Pune to examine them afresh on the basis of the Government Circulars and the relevant records."

It is under these circumstances the Supreme Court had remanded the matter to the Commissioner.

10. In the present case, petitioners had made representation to the Divisional Commissioner - Respondent No.3 and their representation was considered by the Divisional Commissioner on merits and, thereafter, by a reasoned order, respondent No.3 was pleased to reject the representation made by the

petitioners. In the said order, the Divisional Commissioner has observed that the applicants had not produced any evidence in respect of the oral partition and, therefore, the contention of the petitioners that there was an oral partition in the year 1980 was not accepted. Similarly, it has been observed that the petitioners had not produced the relevant records to show that their land fell outside the benefitted zone.

The contention of the petitioners was not accepted.

11. The Division Bench of this Court in the case of Shivgonda Balgonda (supra) also observed that mutation entry recording names of heirs of deceased khatedar and setting out shares in which various lands were being cultivated by sons only, cannot be said to record any partition effected between sons. At the highest, it recorded family arrangement between the co-parceners. In the present case also, though it is contended that there was an oral partition between the parties, no documentary evidence has been produced on behalf of the petitioners before the Commissioner - respondent No.3 or before this Court. The ratio of the Judgment in the case of Shivgonda Balgonda (supra) is squarely applicable to the facts of the present case. We, therefore, do not see any reason to interfere with the order passed by the respondent No.3

or with the acquisition proceedings which have culminated in passing of award by the Special Land Acquisition Officer.

12. Accordingly, Writ Petition is dismissed. Rule is discharged with no order as to costs. Interim order, if any, stands vacated.

(R.M.S.KHANDEPARKAR,J.)

(V. M. KANADE, J.)